

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3359 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

P.T.CHANDWANI

Versus

STATE OF GUJARAT

Appearance:

MR JF SHAH for Petitioner

None present for Respondents No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/03/98

C.A.V. JUDGEMENT

Heard the learned counsel for the petitioner.

2. By this special civil application, the petitioner prays for direction to the respondents to treat him as having been regularly promoted to the post of District T.B. Officer, Class-I from 7-4-1973 and to grant to him all ancillary benefits including monetary benefits.

3. It is not in dispute that under the order dated 3-2-1978, annexure 'D' on the record of this special civil application filed by the petitioner, the petitioner was temporarily promoted and appointed to officiate as District T.B. Officer, Class-I from the date of taking over the charge for a period not exceeding one year.

4. The learned counsel for the petitioner contended that the petitioner has worked on the higher post i.e. Class-I post and further the respondents have taken from him the work of Class-I post, and as such, he is entitled for the promotion on the said post from the said date with all the consequential benefits. In support of this contention, the learned counsel for the petitioner placed reliance on the decision of the Andhra Pradesh High Court reported in 1974 (1) SLR 674.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

6. Under the order dated 17-3-1973, the petitioner was transferred as a Medical Officer, Class-II against Class-I post of District T.B. Officer, District T.B. Centre, Nadiad. It has been mentioned in the order that he will be entitled to same pay and pay scale of M.O. Class, II which he is drawing at present. From this order, it is correct that the petitioner has been posted against the higher post but with a specific condition that he will be entitled for the same pay scale of Medical Officer, Class-II, which he was drawing at the relevant time. This posting has been accepted by the petitioner with the aforesaid condition and as such it is now difficult to expect from him to challenge this condition before this Court after more than 13 years of the said order. The petitioner has enjoyed the status of the higher post for all the years to come and he has not made any complaint against that arrangement. He started to make complaint only after when he was given officiating promotion of the post. This claim of the petitioner that he may be considered to be regularly promoted from the date of the order annexure 'B' dated 17-3-1973 as Class-I Officer cannot be accepted as he was not given the promotion to the post of Class-I. It was only a stop gap arrangement which has been made. In the case of Ramakant Shripad Sinai Advalpalkar vs. Union of India reported in AIR 1991 SC 1145, their Lordships of the Hon'ble Supreme Court held that 'asking an officer who substantially holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get the salary of

higher post but gets only that in service parlance is called a "charge allowance". Such situations are contemplated where exigencies of public service necessitate such arrangement and even consideration seniority do not enter into it. The person under such arrangement continues to hold his substantive lower post and only discharges duties of the higher post essentially as a stop gap arrangement. The arrangement under the order, annexure 'B' dated 17-3-73 does not amount to the promotion of the petitioner to the post of Class-I. The distinction between a situation where the Government servant is promoted to a higher post and one where he is merely asked to discharge the duties of a higher post is too clear and require no reiteration. The petitioner has accepted this arrangement for his own benefits as he got the higher status. Otherwise because of his own seniority in the lower cadre he may or may not be entitled to for the promotion. The petitioner in fact was satisfied with the conferment of higher status to him because of the qualification of post graduation but he started to claim the promotion on the post from the very date from which the aforesaid arrangement is made when he was given the officiating promotion thereon. The petitioner has not made any grievance so long as he continued to hold the higher post under the stop gap arrangement but when he was given the officiating promotion he raised this claim and only on this conduct alone, the petitioner is not entitled for the same.

7. Otherwise also, the filing of this special civil application in the year 1986 for this relief i.e. after his officiating promotion in the year 1978 otherwise also suffers from the defect of delay and laches. So on merits the claim of the petitioner cannot be accepted and otherwise also this petition suffers from the defect of delay and laches. In view of the decision of the Hon'ble Supreme Court in the case of Ramakant Shripad Sinai vs. Union of India (supra), the decision of the Hon'ble A.P. High Court on which reliance has been placed by the learned counsel for the petitioner need not be gone into.

9. In the result, this special civil application fails and the same is dismissed. Rule discharged.
